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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,426	12/10/2003	Paul O. Zamora	01173/100C071-US6	2146

55506 7590 01/31/2006

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EXAMINER

JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/733,426	ZAMORA ET AL.	
	Examiner	Art Unit	
	D. L. Jones	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/7/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20 and 23-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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ACKNOWLEDGMENTS

1. The Examiner acknowledges receipt of the amendment filed 11/7/05 wherein claims 1-19, 21, and 22 are canceled and claim 20 is amended.

Note: Claims 20 and 23-31 are pending.

RESPONSE TO APPLICANT'S AMENDMENTS/ARGUMENTS

2. The Applicant's arguments filed 11/7/05 to the rejection of claims 20 and 23-31 made by the Examiner under 35 USC 103 have been fully considered and deemed non-persuasive for the following reasons.

The rejection of claims 20 and 23-31 under 345 USC 103(a) as being unpatentable over Rhodes (US Patent No. 5,102,990) in view of Grog et al (US Patent No. 4,510,125) is MAINTAINED for reasons of record in the office action mailed 5/3/05 and those set forth below.

Applicant asserts that the instant invention is distinguished over the cited prior art because the claim has been amended to state that the second container consists essentially of a stabilizer selected from a Markush grouping.

Applicant is respectfully requested to review MPEP 2111.03 which is directed to transitional phrases. In particular, Applicant's attention is directed to the section which discloses that 'a consisting essential of' claim occupies a middle ground between closed claims that are written in a consisting of formation and fully open claims that are drafted in a 'comprising' format. Thus, for the purposes of searching for Applicant's invention and applying prior art under 35 USC 103, in this instance, absent a clear

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indication in the specification or claims of what the basic and novel characteristics actually are 'consisting essential of' will be construed as equivalent to 'comprising'.

Hence, the cited prior art rejection is deemed proper.

It is also noted that in columns 5-6, bridging paragraph, the protein substrate to be radiolabeled is admixed with a stannous chloride solution and the resulting solution is purged of oxygen. Thus, indicating that a first vial may contain only the protein solution (protein substrate and stannous chloride). Then, since in column 7, lines 45-48, it is disclosed that a mixture comprising a protein and radionuclide reducing solution which was frozen or lyophilized, may be stabilized by the addition of a carrier protein that was not included in the original vial. Thus, motivation is provided to have a separate vial containing the stabilizer especially, if you have a kit that is distributed to medical facilities wherein all ingredients necessary to perform the diagnostic procedure are included in the kit.

COMMENTS/NOTES

3. Applicant is respectfully requested to replace 'said protein' with 'said antibody' to correct the antecedent basis in independent claim 20.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not


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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. L. Jones
Primary Examiner
Art Unit 1618

January 23, 2006